

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

LARRY W. FIELDS,

Appellant.

No. 32738-4-II

UNPUBLISHED OPINION

QUINN-BRINTNALL, C.J. — Larry Fields appeals the revocation of his special sex offender sentencing alternative (SSOSA) and reinstatement of his 97.5-month standard range sentence, contending that the trial court erred by (1) admitting hearsay evidence; (2) failing to give him notice of the revocation hearing; (3) applying the wrong standard to revoke his SSOSA; and (4) crediting an incorrect amount of time served when it re-imposed his original sentence. Pro se, Fields argues that (1) the sentencing condition requiring that he possess no pornography is unconstitutionally vague; (2) the evidence discovered during the search of his residence must be suppressed; (3) he was subjected to discrimination and harassment; and (4) he received ineffective assistance of counsel. Finding no error, we affirm.

FACTS

On May 20, 1998, Fields pleaded guilty and was convicted of two counts attempted first

degree child molestation, counts I and II, and one count attempted second degree child molestation, count III. The trial court sentenced Fields to a standard range sentence of 97.5 months, but suspended all but four months under SSOSA according to former RCW 9.94A.120(8)(a)(ii) (1997). Fields's SSOSA sentence required that Fields possess no pornography as defined by his community corrections officer (CCO) or treatment official and possess or consume no alcohol or illegal drugs. He also was required to successfully complete a three-year outpatient sex offender treatment program with a qualified treatment provider,¹ obey a 10 p.m. curfew, and abide by geographical restrictions. Fields was sentenced to serve four months' confinement with credit for 33 days already served.

On August 31, 2004, Fields's CCO, Douglas Butcher,² and another CCO visited Fields's residence. Fields lived downstairs and his mother lived upstairs. The CCOs walked with Fields to the back yard. There they noticed a small outlying cottage-like building. Fields told them that the cottage had been a residence but that now he and his mother used it as a tool shed. With Fields's permission, Butcher looked in the tool shed. There he discovered a marijuana grow operation. Fields admitted that the marijuana was his. Butcher called 911. When the police searched the cottage and the residence, they found pornographic videos and magazines in the laundry room of Fields's residence.

¹ January 2, 2003, Fields completed his sex offender treatment program portion of his sentence.

² The record also refers to Butcher as Dave.

Fields was arrested for possession of marijuana³ and possessing pornographic videos and magazines. Kitsap County Judge Anna Laurie conducted a two-day revocation hearing to determine whether Fields's SSOSA should be revoked.⁴ Three people testified at the revocation hearing: Butcher, Fields, and Dr. Whitehill.

During the revocation hearing, Fields admitted that he violated the conditions of his judgment and sentence by using and growing marijuana. He also admitted to using and possessing pornography in violation of his judgment and sentence. "Those triple 'X' sex tapes were not supposed to be in my house. I was not supposed to be watching them, and I know that, and I shouldn't have kept it secret. I have nobody to blame except me." 2 Report of Proceedings (RP) at 56.

Dr. Whitehill testified that Fields was not a high risk to the community. He stated that he did not think that Fields had ever been a high risk, but that Fields's level of risk had increased as a result of his secrecy, marijuana growing, possessing unauthorized pornography, and having undisclosed relationships. Dr. Whitehill recommended against revoking Fields's SSOSA, stating that despite being serious, Fields's violations fell "far below the threshold" of when he usually recommended revocation. 2 RP at 25.

But the court disagreed. It found that Fields was impossible to supervise under his SSOSA sentence.

³ Fields pleaded guilty and, on October 20, 2004, was convicted for one count of manufacturing marijuana.

⁴ In addition to these three new violations, Fields had earlier violations for possession and use of pornography that were handled administratively. He also had other incidents with violation of his curfew and geographical restrictions. Additionally, the record is replete with testimony regarding Fields's use of secrecy and his failure to disclose things to his therapist, group, or CCO.

XIX.

That as a result of these deceptions and failure to disclose, the defendant is impossible to supervise under his SSOSA sentence.

XX.

That the defendant is a threat to the community because of his ability to deceive, his failure to disclose his behavior and because he has possessed pornography and committed the crime of manufacturing marijuana all while under community custody supervision.

Clerk's Papers (CP) at 125-26.⁵

The court revoked Fields's SSOSA and reinstated Fields's original 97.5-month sentence with credit for the four months' confinement time already served. Fields appeals.

ANALYSIS

Hearsay/Due process

Fields maintains that Butcher's hearsay testimony at the revocation hearing violated his due process rights.

An individual accused of violating the conditions of a SSOSA is entitled to minimal due process protections. *State v. Abd-Rahmaan*, 154 Wn.2d 280, 288, 111 P.3d 1157 (2005); *State v. Dahl*, 139 Wn.2d 678, 683, 990 P.2d 396 (1999). Those include the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation), a written finding as to the evidence relied on, and reasons for the revocation. *Dahl*, 139 Wn.2d at 683. The court may admit hearsay evidence in a post-conviction hearing upon a finding of good cause. *Dahl*, 139 Wn.2d at 686. "Good cause is defined in terms of 'difficulty and expense of procuring witnesses in combination with "demonstrably reliable" or

⁵ The court signed findings of fact and conclusions of law, but the record contains only an unsigned copy. It found that he was a threat to the community because of his ability to deceive and failure to disclose his sexual relationships and because he possessed pornography and manufactured marijuana while in community custody. It concluded that he violated the terms of his SSOSA by possessing pornography and manufacturing marijuana and revoked his SSOSA.

“clearly reliable” evidence.”” *Dahl*, 139 Wn.2d at 686 (quoting *State v. Nelson*, 103 Wn.2d 760, 765, 697 P.2d 579 (1985)). “When admitting hearsay on a finding of good cause, trial courts are required to articulate the basis on which they are admitting the hearsay testimony by either oral or written findings in order to facilitate appellate review.” *Abd-Rahmaan*, 154 Wn.2d at 291.⁶

Fields asserts that the trial court erred by permitting Butcher’s hearsay testimony without requiring the State to show good cause and without articulating on the record the basis for admitting the hearsay evidence. He asserts that he was prejudiced by this violation and asks that we dismiss the State’s revocation petition.

Butcher testified that the pornography was found by an officer in the laundry room. Because Butcher testified from an incident report, Fields objected on hearsay grounds.⁷ The court overruled the objection, stating:

Well, I appreciate that there was a misunderstanding^[8] and I don’t think that’s completely unusual.

In this case I am going to allow the testimony under rule 1101, but how much can be gleaned from the bare records in terms of [defense counsel’s] point that it may have been in possession of some of the other housemates, I guess remains to be seen.

1 RP at 37.

Violations of a defendant’s minimal due process right to confrontation are subject to harmless error analysis. The harm in erroneously admitting hearsay evidence, and thus denying

⁶ While *Abd-Rahmaan* is a modification hearing case, the rules still apply to revocation hearings because the two types of hearings are not substantially different.

⁷ Fields argued that the statement was inadmissible hearsay and that the State is going to have to show that Fields was in possession of the backdrop because there were other people that lived in the home in different areas.

⁸ Defense maintained that it originally thought that Butcher found the pornography.

the right to confront witnesses in a revocation case, is the possibility that the trial court will rely on unverified evidence in revoking the suspended sentence. *Dahl*, 139 Wn.2d at 688.

But here, error, if any, was clearly harmless. Fields admitted that he violated the conditions of his SSOSA by possessing triple X videos. Moreover, he testified that the pornography in question was in the laundry room. After Fields's admission, the hearsay statement itself—where in Fields's house the box of pornography was located—is totally irrelevant. The harm from erroneously admitting hearsay evidence in the context of a revocation hearing is the possibility that the trial court will rely on unverified evidence in revoking the suspended sentence. *Dahl*, 139 Wn.2d at 688. Here, Fields's admission verified the hearsay statement and the trial court did not rely on unverified evidence in making its decision to revoke Fields's SSOSA. Thus, any error was harmless.

Notice of Violations/Due Process

Fields also argues that we must reverse his sentence because the absence of a formal revocation motion deprived him of the opportunity to explain his version of events. The State argues that the record shows that Fields was informed of the violations and the hearing and that he had ample opportunity to present his case.

Minimal due process requires that Fields receive written notice of claimed violations and disclosure of the evidence against him. *Dahl*, 139 Wn.2d at 683.

The record contains a notice of violation dated September 1, 2004. This notice does not bear a filing stamp, but it specifies that on or about August 31, 2004, Fields violated three conditions of his supervision by possessing and/or manufacturing marijuana, possessing pornography in video format, and possessing pornography in magazine format. The document

also lists the evidence supporting the alleged violation. In the report, Butcher recommended that a violation hearing be scheduled for the earliest possible convenience.

The supplemental clerk's papers also contain a document dated September 15, 2004. This document indicates that there is a motion to revoke SSOSA special set for October 20, 2004, and that Fields received written and oral notice of the hearing date. It indicates that on September 15, 2004, Fields appeared in custody and was represented by counsel. The record also contains a document noting the State's motion to continue the October 20, 2004 SSOSA revocation hearing until November 15, 2004. This document shows that the court granted the continuance and that Fields received oral and written notice of the new hearing date. The record shows that Fields's due process rights to adequate notice and an opportunity to be heard were protected.

Revocation Standard

Citing former RCW 9.94A.120(8)(a)(ii),⁹ Fields argues that the trial court improperly focused on whether revocation was in the community's best interests and did not adequately consider whether it was also in Fields's best interest. Fields argues that before revoking a SSOSA, the trial court must determine whether revocation is in the community's *and* the offender's best interest. We disagree.

Former RCW 9.94A(8)(a)(vi) (1997)¹⁰ governed Fields's SSOSA revocation hearing, not

⁹ Former RCW 9.94A.120(8)(a)(ii) stated:

After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sex offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension.

¹⁰ Former RCW 9.94A(8)(a)(vi) states:

The court may revoke the suspended sentence at any time during the period of

former RCW 9.94A(8)(a)(ii).¹¹ That statute provided that an offender's SSOSA may be revoked at any time an offender has violated a condition of his suspended sentence or failed to make satisfactory progress in treatment.¹² Former RCW 9.94A.120(8)(a)(vi); *Dahl*, 139 Wn.2d at 683. The applicable revocation standard did not require the court to consider the violating offender's best interests. Former RCW 9.94A.120(8)(a)(vi).

Fields additionally appears to claim that because the proper standard is whether revocation would benefit the offender and the community, the court "negated [his] right to allocution" by applying the wrong standard. Br. of Appellant at 30. We cannot fairly address inadequately briefed issues. RAP 10.3(a)(5). Moreover, the record shows that Fields was not denied the right to allocution. During allocution, Fields said: "I'm very sorry. This has been my fault from the beginning, and I wish that her Honor could have found a different verdict the other day, but I understand where we're at today, and I hope to do better in the future. I hope this is the last time to see me." RP (Nov. 19, 2004) at 4.

community custody and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

¹¹ The State cites to RCW 9.94A.670(10)(a) as the authority for revoking Fields's sentence. The court's unsigned conclusions of law also reference this provision. But this statute was not in effect at the time Fields committed the crime and was sentenced. Former RCW 9.94A.120(8)(a)(vi) is the correct statute. The statutes contain exactly the same language regarding the court's discretionary ability to revoke SSOSA.

¹² "Proof of violations need not be established beyond a reasonable doubt, but only must 'reasonably satisfy' the court the breach of condition occurred." *State v. Badger*, 64 Wn. App. 904, 908, 827 P.2d 318 (1992).